It is a rule of the common law that the owner of property is liable for the negligent use of it as to all who are lawfully on the premises but not as to those who are there without right or without permission. The rule is usually expressed by saying that there is no affirmative duty to exercise care toward a trespasser—the owner of the property must only refrain from wilful injury. *Baker v. Byrne,* 58 Barb. 438; *Elliott v. Carlson,* 54 Ill. App. 470; *Rooney v. Woolworth,* 74 Conn. 720. But there are decisions which except from the general rule all cases where children are injured by reason of the maintenance on private property of "an attractive nuisance"—that is, one which from its nature, location, and inherent dangerous character is likely to attract and injure irresponsible children. It started and has had its most frequent application in the case of railroad turntables. *Sioux City and P. R. Co. v. Stout,* 17 Wall, 657; *Chicago etc. R. Co. v. Fox,* 38 Ind. App. 268; *Barrett v. So. Pacific Co.,* 91 Cal. 296. These cases proceed on one of three theories:—that a child of tender years can not be a trespasser, that the attraction amounts to an invitation, or that as to such a child the attraction is a wilfully concealed danger. All of these grounds have been entirely repudiated in some jurisdictions. *Delaware, L. & W. R. Co. v. Reich,* 61 N. J. L. 635; *Frost v. Eastern R. Co.,* 64 N. H. 220; *Daniels v. N. Y. & N. E. R. Co.,* 154 Mass. 349; *Wilmot v. McPadden,* 79 Conn. 367. These cases hold that temptation is not such invitation as will excuse a trespass and that the duty of protecting children is on their parents and not on the owners of property. The majority rule would seem to favor the attractive nuisance doctrine in all cases of machinery or devices which would tend to attract children, though generally restricted to cases of ponds, holes, cisterns or structures like barns or railroad stations. The doctrine never applies where the owner of the property could not carry on his lawful business in the necessary and ordinary manner and at the same time take precautions against trespassing children. *Chicago etc. R. Co. v. Fox, supra.* In the principal case the age of the child, the dangerous character of the machinery, and its location only a few feet from a much-traveled street bring it well within a conservative application of the attractive nuisance doctrine.

V. L. K.

NEGLIGENCE—LEGAL CAUSE—SPREADING FIRES.—DAVIES ET AL. V. DEL. L. & W. RY. CO., 109 N. E. (N. Y.) 95.—*Held,* that although a railroad can not be held for a loss caused to one proprietor communicated by way of the premises of another, it is liable in the case of a fire spreading from one building to another on the premises of a single proprietor.

By the established rule of New York, recovery for loss from the spread of fire is limited to the premises adjacent to those of the defendant. *Ryan v. Ry. Co.,* 35 N. Y. 210; *Van Inwegen v. Ry. Co.,* 165 N. Y. 625. Accord, *Ry. Co. v. Kerr,* 62 Pa. 353. Other authorities are agreed only to the extent of repudiating this arbitrary limitation. *Ry. Co. v. Barker,* 94 Ky. 71; *Ry. Co. v. Gantt,* 39 Md. 115; *Johnson v. Ry. Co.,* 31 Minn. 57. The judicial language in some instances points to an unlimited liability, whatever the duration and extent of the conflagration, in the absence of an extraordinary, active, intervening agency. See *Ry. Co. v. Stamford,* 12 Kan. 354; *Ry. Co. v. Wilbach,* 113 S. W. (Tex. Civ. App. 1908) 318. According to other opinions, however, the intervening cause may be merely negative, such as an extraordinary failure, whether culpable

or otherwise, of a counteracting agency, such as in the natural and probable course of events would have been evoked to meet the situation. *Doggett v. Ry. Co.*, 78 N. C. 305 (ample opportunity to check conflagration; extraordinary failure to do so). See *Phillips v. Ry. Co.*, 138 N. C. 12, 20. Cf. *Ry. Co. v. Barrett*, 78 Miss. 432 (time and distance proper elements to be considered in determining proximateness or remoteness); *Henry v. Ry. Co.*, 50 Cal. 176 (distinguishing cases of city block and of open field); *Ry. Co. v. Westover*, 4 Neb. 268 (emphasizing rapidity of conflagration); *Hoffman v. King*, 160 N. Y. 618 (emphasizing length of time between negligence and loss). The majority of cases intimate nothing as to the possibility of negative as well as positive intervening causes. *Ry. Co. v. Salmon*, 39 N. J. L. 299; *Ry. Co. v. Hope*, 80 Pa. St. 373. The North Carolina doctrine of negative intervening cause is in harmony with either the "foreseeable" test, or the test of "natural and proximate sequence," as a criterion of legal causal relation. By removing the possibility of unlimited liability, it would destroy the main argument for the illogical rule obliquely recognized in the principal case.

C. R. W.

WAR—EFFECT ON EXISTING CONTRACTS AND REMEDIES—CONTRACT RIGHTS AND REMEDIES OF ALIEN ENEMIES—BILL FOR SPECIFIC PERFORMANCE IN A NEUTRAL FORUM.—COMPAGNIE UNIVERSELLE DE TELEGRAPHIC ET DE TELEPHONIC SANS FIL V. UNITED STATES SERVICE CORPORATION, 95 ATL. (N. J.) 187.—*Held*, on a bill for specific performance by a company of one belligerent nation against a company of another belligerent, that statutes of the respective nations prohibiting such performance did not forbid institution of suit or its defense, that the ground of aid to an alien enemy failed, that comity required that a neutral court be open to the litigants, and that chancery would grant the degree. Where one nation is at war with another, all subjects or citizens of one are deemed in hostility to citizens of the other and they have no capacity to contract between each other. *Scholefield v. Eichelberger*, 32 U. S. (7 Pet.) 586; *White v. Burnley*, 61 U. S. (20 How.) 235. And property engaged in trade with the enemy is subject to confiscation. *The Rapid*, Fed. Cas. No. 11576, 12 U. S. (8 Cranch) 155. But a joint owner of personalty in an enemy's country during a war may use part of his property to bribe enemy officers to save the remainder from destruction. *Coogan v. U. S.*, 7 Ct. Cl. 510. As to a contract made previous to a declaration of war, judicial enforcement in the countries at war is suspended, if the nature of the contract permits; but its obligation does not cease, and the remedy revives with the restoration of peace. *Semmes v. Fire Ins. Co.*, 80 U. S. (13 Wall.) 158; *Watts, Watts & Co. v. Unione Austriaca de Navigazione*, 224 Fed. 188. *Contra; Isaacs v. McGrath*, 2 McCord (S. C.) 26 (holding that war ends all executory contracts between citizens of belligerent nations). The interesting feature of the principal case is that it apparently is without direct precedent in considering the enforcement in a neutral forum of a contract between belligerents made previous to the war. The reason which moves a belligerent court to prohibit performance—that the enemy may not be benefited—does not apply to a neutral court, and consideration for the patriotic motives of the contestants must not be allowed to stand in the way of the execution of justice.

S. B.